

REPORT ON THE 2018–19 MONITORING MISSION ON HUMAN RIGHTS COMPLIANCE IN THE REPUBLIC OF KAZAKHSTAN



FIDU
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Italian Federation
for Human Rights

The Italian Federation for Human Rights (FIDU) is active since 6 October 1987 as Italian Helsinki Committee. FIDU promotes the protection of human rights as enshrined in the Universal Declaration of Human Rights of 1948, the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights of 1966, the Helsinki Final Act of the Conference on Security and Cooperation in Europe of 1975, the Charter of Fundamental Rights of the European Union of 2007 and in other relevant international documents. FIDU therefore intends to work to spread the knowledge of human rights, monitor and report their violations, create greater awareness in public opinion, and exert influence on the States so that they comply with their own commitments on human rights.

FIDU is based in Rome and operates throughout Italy and worldwide; carries out its activities through its national and local bodies, and achieves its goals in compliance with international and EU standards, as well as with the Italian Constitution and laws.



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1. INTRODUCTION

In June 2018, the Italian Federation for Human Rights launched a human rights monitoring mission to Kazakhstan. The mission's goal was to monitor Kazakhstan's compliance with its obligations under international human rights treaties. The mission was attended by human rights activists, journalists and photo correspondents from Belarus, Germany and Ukraine.

At first, the Kazakhstani authorities did not obstruct the mission. Our observers attended politically motivated court trials and held a series of meetings with civic activists, human rights defenders, counsels, relatives of people persecuted on political grounds, and government officials.

However, along with the general deterioration of the situation with respect to human rights and the rule of law in Kazakhstan, cases of obstruction of the FIDU observers' work began. In February 2019, the Kazakhstani authorities, with gross violations, detained and expelled observers Lyudmyla Voloshyna and Valeriy Yavtushenko, both citizens of Ukraine, from the country. In May 2019, the Ukrainian citizen Sergiy Antonishen was not allowed to enter Kazakhstan, with no reason being provided for the decision. **Thus, the further work of FIDU observers in Kazakhstan was blocked.**

Information continued to be collected thanks to the help of volunteers from Kazakhstan, who were also repeatedly subjected to illegal detentions in retaliation for their human rights activities. Our volunteers Zhanbota Alzhanova, Aigerim Mukhamedzhan, Aliya Izbasarova, Maksat Mukarov, Dana Zhanayeva and Daniyar Khasenov faced persecution. Moreover, a criminal case was initiated against Khasenov on charges of "participation in an extremist organisation". Also due to pressure from the international community, the prosecution was terminated.

In accordance with the 1998 UN Declaration on Human Rights Defenders, each state must respect and protect the activities of human rights defenders. However, **not only do the Kazakhstani authorities fail to provide security guarantees to members of human rights missions, but they often also openly impede observation.** We are disappointed by the actions of the Kazakhstani authorities, which *de facto* in most cases do not demonstrate readiness for constructive dialogue.

In Kazakhstan, the mission recorded gross violations of the right to freedom of peaceful assembly, freedom of opinion, freedom of information, protection from arbitrary detention and protection against torture, as well as the right to a lawyer and a fair trial. Thus, the authorities are **violating ratified international agreements** – the International Covenant on Civil and Political Rights and the UN Convention against Torture. Also, these actions are contrary to the Agreement on Enhanced Partnership between the EU and Kazakhstan and the commitments of Kazakhstan within the OSCE.

Civil society activists are being subjected to arbitrary detention, politically motivated criminal prosecution, imprisonment, searches, torture and ill-treatment. Cases of accounts being blocked, bans on leaving Kazakhstan, pressure on families, dismissals from work and threats of expulsion from university have been recorded.

In order to prosecute their critics, the authorities use a number of politicised and vague articles of the Criminal Code, in particular, "incitement to social discord" (Article 174), "slander" (Article 130), "dissemination of knowingly false information" (Article 274), "violation of the procedure for holding meetings" (Art. 400), "public calls for the seizure of power" (Art. 179), "participation in the activities of an organisation which has been recognised as extremist"(Art. 405), "provision of information services to a criminal group" (Art. 266), etc. In Kazakhstan, more than 99.8% of court verdicts are guilty verdicts.¹

According to the conclusion of the UN Special Rapporteur on freedom of peaceful assembly, **the right to peaceful assembly** in Kazakhstan is so limited that it makes no sense to claim it exists.² In 2016, more than 1,000 participants in peaceful protests against changes to the Land Code were detained. Subsequently,

¹ <https://newtimes.kz/eksklyuziv/94912-tolko-1-cheloveka-iz-1000-podsudimyykh-sudy-opravdyvayut-v-kazakhstane-cto-ob-etom-govoryat-yuristy>

² <http://freeassembly.net/reports/kazakhstan/>

activist Max Bokayev was sentenced to a prison term. He continues to be in prison, despite the demands of the UN Working Group on Arbitrary Detention for his immediate release.³ In exchange for release, representatives of the Presidential Administration demanded that Bokayev guarantee that he would not engage in civil society activities and would admit his guilt, but he did not agree to such conditions.⁴

The detentions of participants in peaceful assemblies and the persecution of civil society representatives intensified after the court in Kazakhstan declared the opposition movement **Democratic Choice of Kazakhstan (DCK)** an “extremist” organisation in March 2018. The court decision states that the DCK “creates a negative image of the authorities”, “incites social discord” and “encourages political disobedience”.⁵ In fact, opposition activity in Kazakhstan was outlawed and equated to “extremism”. On 14 March 2019, in its resolution, the European Parliament recognised the peaceful nature of the DCK.⁶

The results of our monitoring confirm that from March 2018 to the present day **more than 6,000 people have been arbitrarily detained** for participating in peaceful rallies. Most of the detentions were held in June 2019 during protests against the rigging of the early presidential elections. According to official figures, approx. 4,000 people were detained, which is an unprecedented number in the history of Kazakhstan.⁷ During interrogations, detainees were asked about their political convictions and their attitude to the authorities. The detainees included minors and elderly people, as well as journalists and human rights defenders, including FIDU volunteers. The detentions took place in Almaty, Nur-Sultan, Aktobe, Shymkent, Aktau, Uralsk, Karaganda, Ust-Kamenogorsk, Semey, Pavlodar, Kyzylorda and other cities and towns of Kazakhstan.

In response to the long-standing recommendations of the UN and the EU to amend legislation on peaceful assemblies that does not meet international standards, the Kazakhstani authorities agreed to develop a new law. However, the proposed bill⁸ introduces even more restrictions and is contrary to the International Covenant on Civil and Political Rights.

Since March 2018, more than 40 people **have been prosecuted for supporting the DCK, participating in peaceful rallies and criticising the authorities on social networks** (four of them – Ablovass Dzhumaev, Aset Abishev, Almat Zhumagulov and Kenzhebek Abishev – have been sentenced to prison terms). The cases of Muratbek Tungishbaev, Aset Nurzhaubay and Aigul Akberdiyeva were also widely publicised. FIDU observers attended the trials. In total, at least 23 people were convicted of supporting DCK.

The results of our observations, as well as studies by other human rights defenders, suggest that at present **there are at least 13 political prisoners in Kazakhstan** [see Attachment].

The results of our meetings, as well as the reports of UN bodies and human rights organisations, confirm that **torture in Kazakhstani prisons and pre-trial detention centres is systematic in nature**. The victims of torture are both politically persecuted persons and other prisoners. This report details, in particular, the cases of Ablovass Dzhumayev, Iskander Yerimbetov, Almat Zhumagulov, Kenzhebek Abishev, Aset Nurzhaubay, and Muratbek Tungishbayev. The torture victims Nurzhaubay and Tungishbaev not only “repented” and renounced opposition ideas, but also expressed slanderous information about members of international human rights missions. The facts indicate that this was a condition set by the authorities in exchange for their release.

Due to the efforts of the international community, **more than 10 Kazakhstani political prisoners have been released over the past few years**. Opposition politician Vladimir Kozlov; journalists Guzal Baydalina, Seytkazy Matayev, Aset Matayev, Yaroslav Golyshkin and Amangeldy Batyrbekov; activists Talgat Ayan and Ablovass Dzhumaev; labour union leaders Amin Eleusinov and Nurbek Kushakbaev; and torture victim

³ https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session78/A_HRC_WGAD_2017_16.pdf

⁴ <https://www.uralskweek.kz/2019/09/02/maks-bokaev-zona-eto-kazaxstan-v-miniatyure/>

⁵ <https://www.facebook.com/gulnara.iu/posts/1549569151855938>

⁶ http://www.europarl.europa.eu/doceo/document/TA-8-2019-0203_EN.html

⁷ https://tengrinews.kz/kazakhstan_news/4-tyisyachi-zaderjali-vremya-mitingov-kazhastane-371609/

⁸ <https://legalacts.egov.kz/npa/view?id=3074745>

Iskander Yerimbetov are among those released. The authorities of Kazakhstan are forced to mitigate oppression, as they fear personal sanctions, as well as loss of reputation for the country.

2. ORGANISATIONAL MATTERS

From June 2018 to February 2019, the mission was attended by 15 observers:

- **Sergiy Kharchenko** – photojournalist from Ukraine, stayed in Kazakhstan from 13 June to 22 July 2018, from 15 to 31 August 2018 and from 7 to 30 September 2018.
- **Oleksiy Pivtorak** – analyst of the Chesno public movement (Ukraine), stayed in Kazakhstan from 17 to 24 June 2018.
- **Andriy Chernousov** – human rights activist from Ukraine, Deputy Head of the Board of the Kharkov Institute for Social Research, stayed in Kazakhstan from 25 to 30 June 2018.
- **Simon Mushchik** – human rights defender from Germany, stayed in Kazakhstan from 1 to 7 July 2018.
- **Olga Anoshkina** – lawyer at the Vostok-SOS Charitable Foundation (Ukraine), stayed in Kazakhstan from 8 to 18 July 2018.
- **Iryna Zemlyana** – media expert of the public organisation Institute of Mass Media (Ukraine), stayed in Kazakhstan from 18 to 29 July 2018.
- **Maksym Sytnikov** – human rights defender from Ukraine, stayed in Kazakhstan from 1 to 31 August 2018.
- **Yana Konyk** – journalist from Ukraine, stayed in Kazakhstan from 1 to 31 October 2018.
- **Polina Zabizhko** – photojournalist from Ukraine, stayed in Kazakhstan from 30 September to 15 October 2018.
- **Oleksandr Ratushnyak** – photojournalist from Ukraine, stayed in Kazakhstan from 15 July to 19 August 2018.
- **Yuriy Fabishevskiy** – Head of the regional organisation Young Democrats (Belarus), stayed in Kazakhstan from 7 to 30 September 2018.
- **Oleksandr Ermochenko** – photojournalist from Ukraine, stayed in Kazakhstan from 1 to 14 August 2018 and from 14 to 31 October 2018.
- **Nazariy Boyarsky** – human rights defender from Ukraine, stayed in Kazakhstan from 3 to 24 November 2018.
- **Svitlana Shcherban** – employee of the Kharkov Institute of Social Research (Ukraine), stayed in Kazakhstan from 1 to 14 December 2018.
- **Sergiy Antonishen** – journalist and photojournalist from Ukraine, stayed in Kazakhstan from 31 October 2018 to 4 February 2019.
- **Lyudmyla Voloshyna** – journalist and human rights activist from Ukraine, stayed in Kazakhstan from 1 to 14 February 2019.
- **Valeriy Yavtushenko** – photojournalist from Ukraine, stayed in Kazakhstan from 1 to 14 February 2019.

Throughout the entire observation mission, FIDU **received organisational support from well-known Kazakhstani human rights organisations**, such as Ar-Rukh-Khak ('Conscience. Spirit. Truth', the leader –

Bakhytzhan Toregozhina), Relatives Against Torture (the leader – Elena Semenova) and Kazakhstan International Bureau for Human Rights and Rule of Law (the head – Yevgeniy Zhovtis). We are grateful to these human rights defenders for their assistance in organisational issues and advice on the human rights issues that were the focus of our human rights mission.

In addition to the permanent monitoring mission, in 2018, the Italian Federation for Human Rights and its President Antonio Stango **took part in four human rights monitoring missions to Kazakhstan with the participation of members of the national Parliaments** of Poland (Marcin Świącicki), Italy (Roberto Rampi) and Switzerland (Carlo Sommaruga and Claude Begle), as well as Member of the European Parliament Julie Ward. The MPs held a series of meetings with representatives of the Kazakhstani authorities, as well as with political prisoners and their relatives. The results of the missions are presented in separate reports.^{9,10} The Italian Human Rights Federation covered the expenses of the missions of MPs.

3. MEETINGS WITH CIVIL SOCIETY REPRESENTATIVES AND VICTIMS OF POLITICALLY MOTIVATED PERSECUTION

FIDU observers visited the largest cities of Kazakhstan – Almaty, Nur-Sultan (Astana), Karaganda, Aktau, Ust-Kamenogorsk, Uralsk and Pavlodar.

- **Aktau**

On 3 July 2018, observers Simon Mushchik and Sergiy Kharchenko (photographer) held a meeting with civic society activists and residents of Aktau. On the eve of the meeting, it became known that National Security Committee (NSC) officers had **exerted pressure on activists and threatened them in order to disrupt the planned meeting**. The meeting was attended by approx. 15–20 people. People complained that they had

been dismissed from their jobs (Myrzatay Bereket, Elemis Ibrashev) or fined (Aisha Bibiaisha) because of their participation in peaceful protests. Some people said that they had been arrested (Yestai Asylbekovich) and searched (Totigul Mukhanova) in retaliation for their civic activism.

Zhenis Bisengazyev stated that the NSC officers offered him 50,000 tenge (approx. 120 euros) in exchange for “cooperation”. Bisengazyev



Meeting in Aktau

refused to work for the special services. Shortly afterwards, in March 2018, he was detained and a search was carried out in his house. As a result of the search, leaflets in support of the opposition DCK movement were allegedly found. A criminal case was initiated against him on charges of “inciting social discord”

⁹ <http://fidu.it/en/kazakhstan-the-final-report-of-fidus-april-mission/>

¹⁰ <https://fidu.it/en/kazakhstan-report-on-august-2018-human-rights-monitoring-mission/>

(Article 174, part 1 of the Criminal Code) and “propaganda or public calls to seize power” (Article 179, part 1 of the Criminal Code). In January 2019, the criminal case against Bisengaziyev was closed.

- **Almaty**

On 26 June 2018, observer Andriy Chernousov met with Kazakhstani human rights defenders Sergey Duvanov, Yevgeniy Zhovtis, Erlan Kaliyev, Bakhytzhana Toregozhina and Marianna Gurina. The meeting was also attended by civil society activist Dilnara Insenova and Asel Kopbasynova, the wife of political prisoner Almat Zhumagulov. During the meeting, the topic of politically motivated criminal prosecutions in Kazakhstan, as well as violations of the right to freedom of assembly and the right to freedom of expression, were raised.



Meeting with human rights defenders in Almaty

On 5 July 2018, observers Simon Mushchik and Sergiy Kharchenko (photographer) met with civil society activists and residents of the city of Almaty. The meeting participants stated that they faced pressure and harassment in connection with their civic position. **Bagnur Bek** wrote a comment criticising the authorities, after which his house was searched and his phone, computer and other personal items were seized. In retaliation for civic activism, **Mamet Kabilbekov's** house was also searched and his computer, telephones, as well as money and identity card were seized. **Olga Ripalova** reported that the police tried to persuade her to “cooperate” for a fee of 20,000 tenge (approx. 50 euros). Several people stated that they had been detained for participating in peaceful rallies and expressing support for the opposition movement DCK.

On 8 July 2018, in the village of Kaskelen near Almaty, observer Olga Anoshkina and photographer Sergiy Kharchenko met with the family of **Erkin Kaziyev** and **Roza Kumakova**. Kaziyev was persecuted due to his participation in DCK actions. A search was conducted in his house, as a result of which the police seized his personal belongings and money.¹¹ Criminal charges were brought against Erkin Kaziyev under Art. 405 of the Criminal Code – “participation in the activities of an organisation [meaning DCK – ed.] which has been recognised as extremist”. On 15 October 2019, he was sentenced to one year’s imprisonment.

On 23 August 2018, observer Maksym Sytnikov and Member of the Polish Sejm Marcin Świącicki met with human rights activist Yevgeniy Zhovtis and former political prisoner **Vladimir Kozlov**. From 2007, Kozlov was the head of the unregistered opposition party “Alga!”. He spent almost five years in prison for supporting peaceful oil workers on strike, who were shot by police on 16 December 2011 in Zhanaozen (Mangistau Province). As a result of those developments, according to official figures, at least 17 people were killed, according to unofficial data – approx. 70 people. Kozlov met with peaceful protesters, organised the supply of drinking water, and attracted lawyers in order to solve their problems. He also represented striking oil workers at meetings in the European Commission, the European Parliament, the OSCE and the Polish Sejm.

¹¹ <https://www.youtube.com/watch?v=lfF213cTX9Y&feature=youtu.be>

In October 2012, Kozlov was sentenced to seven and a half years in prison, having been convicted of "inciting social hatred". Bodies of the UN,¹² the EU,¹³ the OSCE PA¹⁴ and the USA¹⁵ recognised the verdict as politically motivated. Based on the verdict against Kozlov, the opposition party *Alga!* and more than 30 influential non-state media were banned in Kazakhstan.¹⁶

As a result of international pressure, in August 2016, the authorities released Kozlov on parole, but included him on **the national list of "persons associated with the financing of terrorism and extremism"**.¹⁷ Due to his inclusion in the list, restrictions regarding the use of banking, postal, notarial and insurance services were imposed on Kozlov. Therefore, in Kazakhstan, Kozlov cannot find a job and is even deprived of the right to drive a car, as he cannot conclude an insurance contract.

This example confirms that the Kazakhstani authorities **continue to persecute inconvenient critics even after they have served their term in prison**. According to Kozlov, representatives of Kazakhstani law enforcement agencies threatened him that since he will have an outstanding conviction for the next seven years, **any opposition or public activity will be regarded as "recidivism"**. On this basis, Kazakhstani law enforcement agencies may again bring Kozlov to criminal liability. In 2019, Kozlov moved to Ukraine and applied for political asylum.

- **Nur-Sultan**

In June 2019, observer Andriy Chernousov, who is an expert on law enforcement accountability and access to justice, interviewed five lawyers in Nur-Sultan and Almaty. The lawyers pointed out **the key issues of advocacy and the legal assistance system in Kazakhstan**. In particular, Kazakhstan's legal profession is 80–90% composed of former law enforcement officials, which casts doubt on its independence from the law enforcement system. In Kazakhstan, there is a practice of disciplinary punishment of lawyers for actions undertaken in order to protect their client – "for interfering with investigative actions", "for opposing the court", "for violating the confidentiality of the investigation". In cases of extremism, lawyers have the obligation to provide data that they have become aware of in connection with the protection of their client. At the same time, participants in peaceful protests are prosecuted on charges of supporting the activities of the "extremist" opposition movement DCK. Lawyers face threats and even physical abuse in connection with their activities.

In July 2018, the authorities adopted the Law on Advocacy and Legal Assistance. International¹⁸ and Kazakhstani¹⁹ associations of lawyers, as well as representatives of the UN,²⁰ OSCE²¹ and the Council of Europe²² criticised the bill for establishing excessive state control over the bar, but the authorities did not heed the criticism. The law, in particular, gives great powers to the Ministry of Justice, which "coordinates" the activities of the bar, carries out "quality control" of legal assistance and can initiate the process of revoking a lawyer's licence.

- **Ust-Kamenogorsk**

On 24 July 2018, observer Iryna Zemlyana held a meeting with civil society activist **Rolan Mashpiyev**. He stated that in May 2016, he submitted an application for a rally; he didn't receive the permission to organise

¹² <https://spcommreports.ohchr.org/TMResultsBase/DownloadPublicCommunicationFile?gId=16637>

¹³ https://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/132776.pdf

¹⁴ <https://www.oscepa.org/news-a-media/press-releases/press-2012/statement-by-president-migliori-on-the-jailing-of-vladimir-kozlov>

¹⁵ <https://www.state.gov/j/drl/rls/hrrpt/2012/sca/204402.htm>

¹⁶ <https://www.osce.org/fom/97680>

¹⁷ <https://kfm.gov.kz/ru/the-list-of-organizations-and-individuals-associat/>

¹⁸ <http://advokatura.kz/wp-content/uploads/Ekspertnyi-analiz-proekta-zakona-ob-Advokatskoj-Devat-ti-i-YUridicheskoi-pomoshhi-IBA-BIC.pdf>

¹⁹ <http://advokatura.kz/pozitsiya-respublikanskoi-kollegii-advokatov-2/>

²⁰ <https://www.ohchr.org/Documents/Issues/Judiciary/Communications/OL-KAZ-17-01-18.pdf>

²¹ <https://www.osce.org/odihr/376189>

²² <http://advokatura.kz/ekspertnoe-zaklyuchenie/>

the event. However, a few days later, he was summoned to court and arrested for 15 days for his intention to hold a rally. After the arrest, Mashpiyev was dismissed from work. After several large protests had taken place in Kazakhstan in May 2018, Mashpiyev was summoned to the police and handed a “clarification” about responsibility for participating in unauthorised rallies.

- **Karaganda**

On 29 July 2018, in Karaganda, observer Andriy Chernousov and photographer Sergiy Kharchenko met with civil society activists. The meeting was attended by approx. 15 people. Residents of Karaganda complained about pressure from authorities in connection with their civil society activities and participation in peaceful protests.



Meeting in Karaganda

4. EXPULSION OF INTERNATIONAL OBSERVERS FROM KAZAKHSTAN

On 14 February 2019, Kazakhstani law enforcement authorities detained members of the FIDU human rights mission, citizens of Ukraine, Lyudmyla Voloshyna and Valeriy Yavtushenko.

For 14 hours, Voloshyna was not allowed to make a phone call or tell anyone about her whereabouts. Yavtushenko remained without any communication for approx. 10 hours. Later it became known that Voloshyna and Yavtushenko had been taken to the Migration Service Directorate in Nur-Sultan. **They were denied the right to make a phone call and the right to a lawyer. The Ukrainian Consul Ivan Almashi was not allowed to meet with them.** At first, the consul was not allowed into the premises of the Migration Service, nor later to the Specialised Administrative Court of Nur-Sultan, where the cases of the detainees were examined. Thus, Art. 36 of the Vienna Convention on Consular Relations was violated, as reported by the Ministry of Foreign Affairs of Ukraine in its note to the Kazakhstani side.

The FIDU observers demanded that they contact their lawyers, but they were provided with only a state lawyer. The trial took place after midnight. **Judge Kuralay Alkhabayeva asked the FIDU representatives**

about the details of the mission. In particular, Voloshyna was asked questions, such as "which court trials she was present at", and "with whom she met and spoke".

The judge concluded that the activities of the FIDU representatives allegedly did not match the purpose of their visit. According to the information system for controlling the entry and exit of foreigners, the purpose of Voloshyna's and Yavtushenko's trip was indicated as "private". However, **when filling out the migration card at the airport, Voloshyna and Yavtushenko clearly indicated that the purpose of their visit was a human rights mission** (this is confirmed by a photocopy of Voloshyna's card).²³ The judge did not inquire as to why the information about the purpose of the visit in the migration card and that in the information system did not match.

Moreover, the General Prosecutor's Office of Kazakhstan provided untruthful information to the Office of the UN High Commissioner for Human Rights stating that Lyudmyla Voloshyna and Valeriy Yavtushenko allegedly did not dispute the allegation of "inconsistency of their activities with the goals indicated upon entering the country".

Early in the morning of 15 February 2019, the court passed a ruling according to which Voloshyna and Yavtushenko were to leave Kazakhstan within five days. However, straight from the courtroom, at about 4:00 a.m. local time, they were transported to their hotel and ordered to pack. At 7:00 a.m. they were put on a plane and only near the door of the plane were they handed their phones. According to observers, the migration service asked them to "not be offended" and "not fly in with missions anymore".

In connection with the expulsion of Valeriy Yavtushenko and Lyudmyla Voloshyna, the Embassy of Ukraine addressed the Ministry of Foreign Affairs of Kazakhstan with a note. Also, the Ukrainian Ombudsman Lyudmila Denisova expressed her indignation at the incident, and sent appeals to the Supreme Court of Kazakhstan and the Commissioner for Human Rights in Kazakhstan.

Valeriy Yavtushenko and Lyudmyla Voloshyna filed motions with the Supreme Court of Kazakhstan, requesting that the decision on their expulsion be reconsidered. However, on 11 June 2019, the Supreme Court replied that they did not see any reason to reconsider the decision, and rejected the motions.

On 5 May 2019, the Kazakhstani authorities **did not allow** FIDU observer Sergiy Antonishen **to enter the country**. At Aktau Airport, he was informed that he had a ban on entry into Kazakhstan for a period of five years. The reason for the ban was not explained to Antonishen.²⁴

According to the information of the Ministry of Foreign Affairs of Ukraine, in May 2019, representatives of the Ministry of Foreign Affairs of Ukraine and Kazakhstan held a meeting on ensuring the activities of the FIDU human rights mission, in which citizens of Ukraine participate. However, the representative of the Kazakhstan's Foreign Ministry did not give assurances regarding the smooth operation of the observation mission.

5. PERSECUTIONS OF FIDU VOLUNTEERS IN KAZAKHSTAN

In Kazakhstan, the activities of FIDU are supported by volunteers, namely Kazakhstani citizens Zhanbota Alzhanova, Aygerim Mukhamedzhan, Aliya Izbasarova, Dana Zhanayeva, Maksat Mukarov and Daniyar Khasenov. Due to the efforts of the volunteers, we were able to continue collecting information on incidents of human rights violations in Kazakhstan after our observers had been expelled from the country. The volunteers monitored violations of the rights of peaceful protesters, collected information about criminal proceedings and attended court trials in cases that were politically motivated. In retaliation for this

²³ http://zmist.pl.ua/blogs/s-nazarbaevym-heppi-endov-ne-budet?fbclid=IwAR17yb-7arMovGWRR51WJxky2Y1Zozx2Lpv3m0t-yO1oAP2HW7D_7UiNR8g

²⁴ <https://www.facebook.com/FIDU.FederazioneItalianaDirittiUmani/photos/a.446652735367728/2436273663072282/?type=3&theater>

activity, they were repeatedly detained by the police, and Khasenov was even subjected to criminal prosecution and a temporary ban on leaving Kazakhstan.

On 9 June 2019, in Nur-Sultan, Mukarov took a photo during a rally, for which he was detained and sentenced to ten days of administrative arrest. On the night of 10 June 2019, Alzhanova, Mukhamedzhan and Izbasarova came to the Baikonur police station in order to transfer food, water and medicine to the detainees. However, the police put them in cars, seized their phones and transferred them to a village 70 km from Nur-Sultan. **They were released after 28 hours. During all this time, they were deprived of food and sleep.** Finally, they were sentenced to an administrative fine of 50,500 tenge (approx. 120 euros). On 6 July 2019, Alzhanova, Mukhamedzhan and Izbasarova were detained again. They were at home and were monitoring mass detentions through social networks. The police arrived at their home and detained them for several hours.

Dana Zhanayeva was threatened with expulsion from university and arrest. She was forced to delete all her accounts on social networks, and was also threatened that problems with her mother's business could occur.

FIDU volunteer **Daniyar Khasenov** received invitations from Italian MPs Roberto Rampi and Mauro del Barba to participate in public hearings and human rights meetings during the summer sessions of PACE, OSCE PA and the Italian Parliament. In addition, Daniyar was supposed to attend medical courses at the University

of Graz (Austria). However, starting in mid-June 2019, he was prevented from leaving Kazakhstan several times.

On 3 May 2019, the Almaty police issued a decision banning Khasenov from leaving Kazakhstan. The next day, on 4 May 2019, a criminal case was initiated against Khasenov on charges of "participation in the activities of an extremist organisation" – the DCK (Article 405, part 2 of the Criminal Code). The first details of the allegations became known in August 2019 from information sent by the Embassy of Kazakhstan in Belgium, which responded to a request from Member of the European



Daniyar Khasenov and Julie Ward

Parliament Julie Ward. It is deeply regrettable that, **in their response, the Kazakhstani authorities provided the Member of the European Parliament with openly false information.**

Thus, the Kazakhstani Embassy reported that Khasenov *"was an active participant in unauthorised rallies of the banned extremist organisation DCK, held in Kazakhstan on 22 March, 1 and 9 May, 9 and 10 June"*. The police repeatedly detained Khasenov during the days of these rallies, **although he did not participate in them and wasn't even in the places where they were held.** Khasenov collected information on arbitrary detentions of peaceful protesters. However, it appears that the Kazakhstani authorities interpret human rights activities and monitoring of politically motivated prosecutions as "extremism".

Previously, in June 2019, the police imposed restrictions on the bank accounts of Khasenov and his family; however, under pressure from the Kazakhstani and international public, the restrictions were lifted.

On 13 August 2019, in Almaty, at a press conference, Khasenov spoke about his persecution. **Immediately after the press conference, police officers, without a properly executed order, detained Khasenov.** On the

same day, the police, referring to the court order dated 6 May 2019, searched the house of Khasenov. The police seized a flash drive, mobile phones and a laptop.

Due to the attention paid by the international community to the Khasenov case, at the end of September 2019, the criminal case was closed “due to a lack of *corpus delicti*”. After that, the ban on Khasenov’s departure from Kazakhstan was lifted, and he was able to take part in human rights meetings in the EU.

6. OBSERVATION OF THE CASES OF POLITICAL PRISONERS

The FIDU observers attended trials of victims of political persecution – Iskander Yerimbetov, Aset Abishev, Ablovas Dzhumayev, Aigul Akberdiyeva, Almat Zhumagulov and Kenzhebek Abishev, Aset Nurzhaubay, Muratbek Tungishbayev and Mukhtar Dzhakishev.

ISKANDER YERIMBETOV

Iskander Yerimbetov is a Kazakhstani businessman, the brother of human rights activist and lawyer Botagoz Jardemali.²⁵ She provided legal advice to an opposition politician, Mukhtar Ablyazov, and other persons persecuted for political reasons in Kazakhstan. The facts confirm that **the authorities subjected Iskander Yerimbetov to criminal prosecution and torture in their attempts to force Botagoz Jardemali to return to Kazakhstan** and “cooperate with the investigation bodies” in the case against Ablyazov.

For many years, the authorities of Kazakhstan have harassed Mukhtar Ablyazov.²⁶ In the period 2002–2003, he was serving a prison sentence in Kazakhstan in connection with his opposition activities. Under pressure from the international community²⁷ he was released from prison. After that, Ablyazov, as a businessman, majority shareholder and chairman of the Board of private BTA Bank, continued to support the opposition, which provoked a new conflict with President Nursultan Nazarbayev. In 2009, Ablyazov was accused of misappropriation of funds from BTA Bank. He left the country, and for the past ten years the Kazakhstani authorities have sought the extradition of him and his associates. On 9 December 2016, the State Council of France refused to extradite Ablyazov and **found the request for his extradition politically motivated**.²⁸ INTERPOL removed the name of Ablyazov and several other persons accused in his case from the wanted list.

Kazakhstan is prosecuting Jardemali within the framework of the Ablyazov case. In October 2013, Belgium granted Jardemali political asylum.

Iskander Yerimbetov was detained on 13 November 2017. Yerimbetov and his parents have repeatedly stated that **he was subjected to torture in a bid to obtain evidence that would be convenient to the investigation bodies**. Representatives of the NSC, who interrogated Yerimbetov without a lawyer in the basement of the pre-trial detention centre, demanded that he persuade Jardemali to return to Kazakhstan and give the necessary testimony incriminating Ablyazov to the investigation bodies. Yerimbetov refused to give false testimony, after which he **was placed, in violation of the law, in a cell with convicted persons, who severely beat him**.

Only two and a half months after the arrest, on 1 February 2018, were human rights activists (Yevgeniy Zhovtis and Zhemis Turmagambetova) first allowed to see Yerimbetov. This was made possible at the request of the UN Special Rapporteur on Torture. The monitoring group noted the severe mental state and sickly look of the arrested, who expressed concern for his safety.²⁹ On 8 February 2018, independent

²⁵ <http://www.protect-lawyers.com/oiaad-content/uploads/2018/05/17-05-2018-appeal-iol-jardemalie-case-en.pdf>

²⁶ <https://www.ft.com/content/1411b1a0-a310-11e7-9e4f-7f5e6a7c98a2>

²⁷ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P5-TA-2003-0064+0+DOC+XML+V0//EN&language=CS>

²⁸ <https://www.conseil-etat.fr/ressources/decisions-contentieuses/dernieres-decisions-importantes/ce-9-decembre-2016-m-o>

²⁹ https://bureau.kz/novosti/sobstvennaya_informaciya/press-reliz_o_poseshenii_sledstvenno_arestovannogo_iskandera_erimbetova/

psychologist Svetlana Chernikova met with Yerimbetov, and the results of her examination confirmed the incidents of torture.³⁰

During a medical examination, numerous bodily injuries were found on Yerimbetov's body, but **the authorities stated that they appeared because Iskander "hit himself against the bedside table and bed". On 22 February 2018, the criminal case on the torture allegation was closed** in connection with the "absence of a criminal event".

On 17 April 2018, in a pre-trial detention centre, a meeting was held between the President of the Italian Federation for Human Rights Antonio Stango, a member of the Polish Sejm Marcin Świąćicki, and Iskander Yerimbetov. We were not allowed to have a personal meeting: representatives of the Ministry of Internal Affairs were present during the conversation. Then, in the presence also of Vice Ministers of Internal and Foreign Affairs and of the Vice Prosecutor General, Yerimbetov stated that his cellmates had beaten him with a wooden stick, choked him with laces, hit him in the face, stomach and groin, and threatened to rape him with a broom and inject him with an AIDS-infected syringe. According to Yerimbetov's mother, the cellmates were acting on the orders of the management of the pre-trial detention centre and the NSC investigators.³¹

Initially, Yerimbetov was accused of "money laundering" – money allegedly embezzled by Mukhtar Ablyazov. However, four months after the arrest, the investigators completely changed the charges to ones unrelated to the Ablyazov case. Yerimbetov was accused of "fraud" (Article 177 of the Criminal Code as amended on 16 July 1997). According to the prosecution, Iskander Yerimbetov's company named "Sky Service" offered its services for unreasonably high prices. In addition to Yerimbetov, his business partners: Mikhail Zorov, Dmitry Pestov and Vasilina Sokolenko, also appeared in the dock.



Live video broadcast of the Yerimbetov's trial

During the trial, members of the human rights mission were not allowed to be present in the courtroom "due to the small capacity of the room". They were forced to watch the proceedings from another room, where a live video broadcast was conducted. The broadcast quality was poor (in some cases there was no sound at all), because of which they could not properly monitor what was happening at the trial.

The trial took place with **an obvious accusatory bias and with an unprecedented**

number of violations, which indicates its political motivation. Defendants Dmitry Pestov and Vasilina Sokolenko, who pleaded guilty during the pre-trial investigation, stated that the investigators had exerted pressure on them, falsified the interrogation protocols and persuaded them to self-incriminate.

On 22 October 2018, all the accused were sentenced. Iskander Yerimbetov was sentenced to seven years in prison with confiscation of property; Dmitry Pestov and Vasilina Sokolenko – to five years in prison with

³⁰ <https://ru.odfoundation.eu/i/fmfiles/kazachstan-dokumenty/2018-02-16-psychological-evaluation-yerimbetov-eng.pdf>

³¹ https://www.youtube.com/watch?v=e8dp9Y_ETig

confiscation of property. Mikhail Zorov, who “pled guilty” and agreed to cooperate with the investigation, was given a suspended three-year prison sentence.

In December 2018, the Italian Federation for Human Rights, along with the Open Dialogue Foundation, which has long experience in protecting human rights in Kazakhstan, prepared a detailed report on the Yerimbetov case, based on the results of the observation mission.³² This report provides more detailed information on the torture of the prisoner and violations during the trial.

On 20 November 2018, the **UN Working Group on Unlawful Detentions** demanded the immediate release of Iskander Yerimbetov.³³ Still, the authorities have ignored this demand for more than a year.

On 27 December 2019, Iskander Yerimbetov was nevertheless released. This happened due to the poor health of the prisoner, which had worsened as a result of the brutal torture. At the same time, Yerimbetov may again return to prison if the authorities consider that he has "recovered". The Kazakhstani authorities have not complied with the UN decision to investigate the arbitrary deprivation of liberty and torture of Yerimbetov and to provide him with compensation.³⁴ In February 2020, Vasilina Sokolenko was also released, as her punishment was mitigated. **Dmitriy Pestov continues to be held in custody.**

ASET ABISHEV

Aset Abishev from Almaty was accused of publishing comments on Facebook in support of the DCK, which “discredit the Head of State, members of his family and the current government of Kazakhstan”. Thus, he allegedly “created a negative image of the authorities” and “provoked protest sentiment of the population”. Abishev faced criminal charges of “providing information services to the DCK criminal group” (Article 266, part 1 of the Criminal Code) and “participating in the activities of an organisation which has been recognised as extremist” (Article 405, part 2 of the Criminal Code). Abishev stated that in his comments on Facebook he only expressed his opinion about the need to increase wages and improve the learning conditions in schools, and did not consider his actions “extremism”.³⁵

On 26 June 2018, observer Andriy Chernousov **held a meeting with Aset Abishev**. FIDU observers also attended trials in the Abishev case.



Aset Abishev during the trial

In July 2018, Aset Abishev was taken into custody. On 26 September 2018, the Almaty District Court of Almaty began to consider his case. The trial was declared open, but journalists and observers were forbidden to carry out audio and video recording or take photographs.

The charges were based on the testimony of two witnesses. One of them, Rosa Abylkasova, stated during the trial that **the investigating bodies had exerted pressure on her** and that there had been no calls for extremism on the part of Abishev. The second key

³² <https://en.odfoundation.eu/a/9026,the-iskander-yerimbetov-case-the-trial-of-the-kazakhstan-regime-s-hostage>

³³ https://www.perseus-strategies.com/wp-content/uploads/2018/12/WGAD-Opinion-67-2018-Iskander-Yerimbetov.pdf?fbclid=IwAR2FGnFUUt6nv68_1qwhjAIE9opPfALh9ZaLKMPHObhKeVhzhV1ykyAliqM

³⁴ https://www.ohchr.org/Documents/Issues/Detention/Opinions/Session83/A_HRC_WGAD_2018_67.pdf

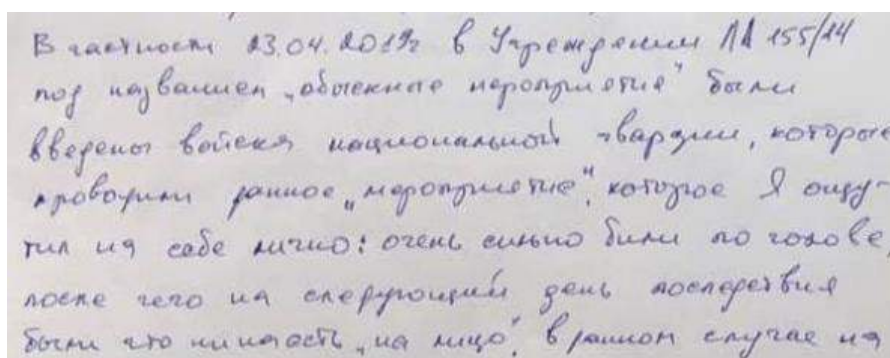
³⁵ https://bureau.kz/novosti/sobstvennaya_informaciya/diskreditirovat_vlast_nelzya/

witness, Natalya Zvenigorodskaya, was not questioned in court. Her testimony was read out by the judge.

Observers noted that the court **failed to secure Abishev's right to appropriate defence**. In particular, the judge did not interrogate the criminal investigator and forensic experts, nor the key witness Zvenigorodskaya. Also, Aset Abishev was not questioned in court. He and his lawyer did not participate in the judicial debate, as they did not have time to prepare for it, and the judge refused to postpone the debate to a later date.

On 30 November 2018, the court sentenced Abishev to four years in prison.

On 23 April 2019, in the penal colony LA 155/14 in the village of Zarechny, where Aset Abishev is serving his term, the National Guard troops were introduced to conduct a mass search in the cells of prisoners. Many prisoners, including Aset Abishev, were brutally beaten. According to Abishev, he was hit on the head and bruises and abrasions were inflicted over his entire body; other prisoners suffered fractures.³⁶ Political prisoners Iskander Yerimbetov and Dmitriy Pestov were also being held in the same penal colony at that time.



A part of Abishev's statement about beating in a penal colony

"...On 23 April 2019, the National Guard troops were introduced into the LA 155/14 institution under the pretext of 'search activities'. They conducted this 'undertaking', which I experienced personally: they hit me on the head very hard, so that 'marks' were visible on my face the next day."

ABLOVAS DZHUMAYEV

Ablovas Dzhumayev is a resident of the city of Aktau. On 10 May 2018, Ablovas Dzhumayev was detained along with his wife Aigul Akberdiyeva on suspicion of participating in an unauthorised rally. A criminal case was initiated against him on charges of "inciting social discord" (Article 174, part 1) and "disseminating propaganda or public calls for the seizure or retention of power" (Article 179, part 1).

The investigation bodies accused Dzhumayev of "*subscribing to the DCK's and Ablyazov's accounts*" on social networks, "*reading the DCK's manifesto*" and "*urging people to attend rallies*". As evidence, the investigation bodies provided screenshots of Dzhumayev's correspondence in the DCK group on Telegram, as well as leaflets calling for "overthrowing the government." Dzhumayev's wife, Aigul Akberdiyeva reported that the police planted the leaflets during the search.

The Aktau City Court, chaired by Aralbay Nagashibayev, examined the case in a very short time. During the period of one month, five hearings were held on the facts of the case. The trial was declared open, but journalists were forbidden to take photographs and carry out video recording. Representatives of the mission, namely: Maksym Sytnikov, Nazariy Boyarskiy and Sergiy Antonishen, attended the court hearings in the Dzhumayev case.

On 14 August, 2018, during the first attendance of international observers at the trial, Judge Aralbay Nagashibayev stated that he was postponing the meeting, as Dzhumayev had "not [been] transferred from

³⁶ <https://www.facebook.com/bota.iardemalie.1/posts/428415611277675>

the pre-trial detention centre”. However, subsequently, Dzhumayev reported that, in fact, that day he was taken to court, and **then transferred back to the pre-trial detention centre without any explanation.**

Dzhumayev requested that the court hearings be carried out in Russian, which would facilitate the work of international observers, but the judge rejected the request. During the trial, interpretation into Russian was provided, but, according to lawyers, it was of poor quality.³⁷

Dzhumayev stated that he spoke on social networks about low salaries, poor quality of roads and the lack of drinking water in his village, and did not consider this “extremism”. Dzhumayev also enunciated in court that **pressure had been exerted on him through his relatives.** On 17 July 2018, in a pre-trial detention centre they brought to him his sick, elderly father who said, *“Son, admit your guilt. They say that this [situation] does not bode well for you. They say that tomorrow something might happen to you and then they will bring your body.”*³⁸ Dzhumayev’s wife reported that NSC investigators persuaded him to plead guilty in exchange for a suspended sentence.

A flagrant case, which is one of the forms of **ill-treatment of a defendant**, occurred on 18 September, 2018. On that day, Dzhumayev received information about his father’s death and, feeling ill, requested that the court session be postponed. The judge refused to do so and replied, *“Haven’t you yourself brought about this situation?”*

During the court hearings, the judge asked those present to rise and answer the questions, such as, “What is your name?”, “Who are you to the defendant?”, “What do you think of the case?”. This can be perceived as a form of exerting pressure. In addition, several people told Dzhumayev’s wife that the NSC had threatened them and demanded that they stop attending court hearings.

On 20 September 2018, a court sentenced Dzhumayev to three years in prison. The Courts of Appeal and of Cassation upheld the verdict.

On 11 September 2019, at the request of Dzhumayev, the court of the city of Atyrau exchanged the remaining term of imprisonment to a restriction of liberty. On 29 July 2019, Ablovass Dzhumayev was released. According to the law, the restriction of liberty imposes a number of restrictions on the convict; in particular, he cannot change his place of residence and should regularly report at the probation service.

In addition, according to the website of the Committee for Financial Monitoring of Kazakhstan, on 23 January 2019, **Ablovass Dzhumayev was included in the national list of “persons associated with the financing of terrorism and extremism”.** Due to this fact, Dzhumayev cannot use banking, notarial, insurance and postal services, or get a job.



Ablovass Dzhumayev during the trial

AIGUL AKBERDIYEVA

Aigul Akberdiyeva is the wife of Ablovass Dzhumayev. They have four minor children.

On 26 June 2018, a criminal case was initiated against Aigul Akberdiyeva. Similarly to the Dzhumayev case, she faced charges of “calls for seizing power” (Article 179, part 2 of the Criminal Code). According to law enforcement agencies, in February 2018, Aigul Akberdiyeva wrote several comments in the “DCK-activist” group on Telegram with a “call to seize power in the country”. The investigation bodies refer to

³⁷ https://www.facebook.com/toregozhina/posts/2057063827639525?_tn=-R

³⁸ <https://rus.azattyq.org/a/aktau-sud-ablovass-dzhumayev-poslednee-slovo/29497654.html>

Akberdiyeva's statements, such as: *"We, peacefully, jointly, must demand resignation from the post of shal [old man – ed.]. [...] Probably, power cannot destroy people, but we must destroy the power. The people provide the authorities with their work, and the power holds high-ranking positions at the expense of the people."* According to the prosecution bodies, Akberdiyeva *"became acquainted with the manifesto of M. Abyazov"*, after which she *"had a negative attitude"* towards the authorities.

Akberdiyeva reported that in March 2018, when she and her husband were being held at the police station, several police officers came to their house, where their children were staying unattended. The police took the phone from her 13-year-old daughter and removed the video recording of the search of the house from the device.

On 24 September 2018, the Aktau City Court, chaired by Judge Malik Kenzhaliyev, began to consider the Akberdiyeva case. The trial was declared open, but it was forbidden to take photographs or carry out video recording. The session was monitored by representatives of the human rights mission – Yana Konyk, Sergiy Antonishen, Lyudmyla Voloshyna, Valeriy Yavtushenko. They attended 15 court hearings.



Aigul Akberdiyeva during the trial

At the beginning of the trial, Judge Kenzhaliyev granted the defence's motion for an additional independent examination of the defendant's statements and publications. However, the appellate court revoked this decision and also removed Judge Kenzhaliyev from the case.

Judge Gulnara Bayturova was appointed in the place of Judge Kenzhaliyev. At the very first meeting, i.e. on 4 January 2019, she granted the defence's motion to dismiss the two prosecutors whom the defence accused of bias. The judge also granted the

defence's request to interrogate as witnesses the investigators who had conducted the investigation. In other politically motivated proceedings, such requests have been systematically rejected.

During the cross-examination in court, Akberdiyeva stated that, following the ban on the DCK, she and Ablovas Dzhumayev were summoned to the police station and asked to read out a statement against the DCK in front of a video camera, but they refused to do so.

Akberdiyeva's defence focused on the fact that the DCK was recognised as an extremist movement in March 2018, while the messages on Messenger in which Akberdiyeva allegedly criticises the authorities, were published in February 2018.

The prosecutor's office requested that Akberdiyeva be sentenced to five years of restriction of liberty. Still, on 6 February 2019, Judge Gulnara Bayturova passed an acquittal. The court also recognised Akberdiyeva's right to demand damages for unlawful criminal prosecution.

In the conditions of authoritarian Kazakhstan, the court decision in the case of Aigul Akberdiyeva caused a sensation. This trial was the only one where observers noted a comprehensive approach to the consideration of the case. In particular, the court granted the key motions of the defence.

On 20 February 2019, the Prosecutor's Office of the Mangistau Province appealed the acquittal of Aigul Akberdiyeva³⁹. On 15 April 2019, the Mangistau Regional Court granted the appeal of the Prosecutor's Office and revoked the acquittal. The case was referred for reconsideration. One of the pretences for the annulment of the sentence was that Judge Bayturova “did not read out the entire text of the verdict” when it was handed down.

Unfortunately, due to the position of the Delegation of the European Union to Kazakhstan (based in Nur-Sultan), the case of Aigul Akberdiyeva was not mentioned in the resolution of the European Parliament dated 14 March 2019 on the human rights situation in Kazakhstan. The Delegation of the European Union to Kazakhstan informed the European External Action Service (EEAS) that, as the court acquitted Akberdiyeva, she was no longer in danger. However, at the time of the adoption of the Resolution, the Prosecutor's Office's appeal against the acquittal had already been filed. Given the current practice of issuing court decisions in politically motivated cases in Kazakhstan, an appeal of a judgement by the Prosecutor's Office almost certainly meant that the acquittal would be revoked. And, indeed, it was.

The pressure exerted on judges in connection with the case of Aigul Akberdiyeva

On 7 February 2019, the day after the acquittal of Aigul Akberdiyeva, the chairman of the Aktau City Court, Malik Kenzhaliyev, was removed from his post. Formally, Kenzhaliyev was removed due to the fact that two years before, he had allegedly not paid out full remuneration to the workers who were building his house.

On 11 February 2019, unknown persons disrupted Kenzhaliyev's press conference in Aktau. He started speaking on the street, but police detained everyone who listened to him, including journalists and FIDU observers.⁴⁰ Near the police station, Kenzhaliyev stated that he was being persecuted in connection with the issuance of an acquittal in the case of Aigul Akberdiyeva. He reported pressure from the special services, as well as the leadership of the Regional and Supreme Courts.⁴¹ The event was covered by **observers of the Italian Federation for Human Rights – citizens of Ukraine Lyudmyla Voloshyna and Valeriy Yavtushenko**.

On 11 February 2019, in Aktau, Judge Kenzhaliyev met with the representatives of FIDU, Voloshyna and Yavtushenko. The judge stated that he was under constant surveillance and he feared for the safety of his family. He requested that the international community protect him and the judge of the Aktau City Court Gulnara Bayturova who had handed down the acquittal in the Akberdiyeva case.⁴²

In the evening of 11 February 2019, via the Telegram messenger, Judge Kenzhaliyev sent to FIDU observers audio recordings of his conversation with Chairman of the Mangystau City Court, Yerzhan Dauliyev. The audio recordings were posted on YouTube.⁴³ According to the audio recordings, Yerzhan Dauliyev **was compelling the judges of the city court Kenzhaliyev and Bayturova to hand down a guilty verdict** in the case of the activist Akberdiyeva.

On 14 February 2019, Judge Kenzhaliyev, along with FIDU observers Voloshyna and Yavtushenko, flew to Nur-Sultan (Astana) in the hope of meeting with the EU diplomats. MEP Julie Ward addressed the Delegation of the European Union to Kazakhstan with a request that they meet with Kenzhaliyev and FIDU observers. Unfortunately, representatives of the Delegation of the European Union to Kazakhstan did not wish to meet, citing that the case "has no political overtones". At the same time, the representative of the Delegation of the European Union to Kazakhstan quoted the information disseminated by the pro-government Kazakhstani mass media that Kenzhaliyev was removed from office due to the fact that he hadn't paid out the remuneration to the workers who built his house.

³⁹ <https://www.facebook.com/aigul.kazakhstan.1/posts/262129624685505>

⁴⁰ <https://www.facebook.com/voloshinaluda/videos/2517440971619366/>

⁴¹ <https://en.odfoundation.eu/a/9092,kazakhstani-judges-subjected-to-persecution-following-the-acquittal-of-a-victim-of-a-politically-motivated-case>

⁴² <https://www.facebook.com/voloshinaluda/videos/2517540348276095/> ;

<https://www.facebook.com/voloshinaluda/videos/2517564161607047/>

⁴³ <https://www.youtube.com/watch?v=NPo7vrFuRWY&t=8s> ; <https://www.youtube.com/watch?v=QpYLDLAKOo8>

In Nur-Sultan (Astana), Kenzhaliyev was summoned to the Supreme Court, and a few hours later, a video recording was published. It presented his appeal, where he claims that the law enforcement authorities “did not exert pressure on him”, that he was “a patriot of his country and the judicial system” and that “he had false opinion about the Aigul Akberdiyeva case as a result of a conversation with individual human rights defenders”.⁴⁴ **At the same time, the police detained FIDU observers Lyudmyla Voloshyna and Valeriy Yavtushenko, after which they were convicted and immediately expelled from Kazakhstan.**

ALMAT ZHUMAGULOV AND KENZHEBEK ABISHEV

Almat Zhumagulov is a DCK activist. Kenzhebek Abishev is a poet and blogger.

According to law enforcement bodies, in November 2017, Zhumagulov and Abishev prepared a video appeal calling for "armed jihad". They also allegedly discussed the possibility of attracting people to the opposition movement DCK. In this regard, they were accused of “promoting terrorism” (Article 256, part 2 of the Criminal Code). Zhumagulov faced further charges of “inciting ethnic hatred” (Article 174, part 1 of the Criminal Code). Zhumagulov and Abishev were arrested.

Neither Zhumagulov nor Abishev are present on the video recording which became the grounds for the criminal prosecution. The video was recorded with the participation of Oralbek Omyrov, Askhat Sharbat and several other persons who were allegedly “unidentified” by law enforcement bodies. As a result, Oralbek Omyrov was also prosecuted for “promoting terrorism”, and Askhat Sharbat became the main witness in the case. It was his testimony that formed the basis of the criminal charges.

In his testimony at the trial, Omyrov stated that **the video recording had been produced at the initiative of former police officer Serik Zhamanbayev**. Omyrov is a former prisoner, which could open up additional opportunities for the authorities to use him for the purpose of provocation. Omyrov also stated that he was offered freedom in exchange for testimony against Almat Zhumagulov.



Kenzhebek Abishev and Almat Zhumagulov during the trial

In April 2018, President of the Italian Federation for Human Rights Antonio Stango and Member of the Polish Sejm Marcin Świącicki **obtained permission to visit Zhumagulov and Abishev in a pre-trial detention centre**. At the meeting, the detainees stated the fabricated nature of the criminal charges, and also emphasised that they were being persecuted for peaceful criticism of the authorities.

On 26 September 2018 the Almalinsky District Court of Almaty, chaired by Judge Kuanysh Aripov, began to

consider the case against Zhumagulov, Abishev and Omyrov. FIDU observers Yana Konyk, Sergiy Antonishen, Oleksandr Yermochenko, Nazariy Boyarsky and Svitlana Shcherban attended the trial. They attended a total of approx. 40 court hearings.

⁴⁴ https://www.youtube.com/watch?v=oT_RmicjLU

The trial was declared open, but journalists were forbidden to carry out audio and video recordings, as well as photography. Those who violated the ban were asked to leave the courtroom.

According to Abishev and Zhumagulov, investigators demanded **that they indicate that the "extremist" video recording was produced "on the orders" and "for the money" of opposition politician Mukhtar Ablyazov.** They were threatened that something could happen to their families.

During the cross-examination in court, several witnesses stated that the investigators exerted pressure on them and threatened them with arrest if they failed to give incriminating testimony against the accused. They stated that the defendants had not committed any illegal actions. The testimonies of the police and NSC investigators were simply read out in court, although the defence insisted that they be cross-examined.

In the courtroom, the defendants reported the deterioration of their health. Zhumagulov stated that in the pre-trial detention centre, he developed a stomach ulcer and kidney problems. Abishev, who was diagnosed with ischemia, intercostal neuralgia, and hypertension, suffered from acute pain in the heart area several times in the pre-trial detention centre. He was denied hospitalisation. Omyrov has a second-group disability status due to visual impairment; during his stay in the pre-trial detention centre, his vision deteriorated even more. The defendants stated that they were not provided with the necessary medical care.

At the court session of 27 November 2018, an untypical situation occurred. Oralbek Omyrov and Almat Zhumagulov cut their wrists in protest against an unfair trial. Following the incident, observers were no longer allowed into the courtroom, they monitored the session through live video broadcasting. On 21 December 2018, the court adopted a private ruling, which blamed the lawyer Gulnara Zhuaspayeva for the incident. The decision noted that the lawyer had urged those present in the courtroom to video record the developments, although *"she should have calmed down the convicts in accordance with her professional duty"*.

On 21 December, 2018, the court sentenced Almat Zhumagulov and Oralbek Omyrov to eight years in prison, and Kenzhebek Abishev to seven years in prison. In May 2019, the appellate court upheld the verdict.

ASET NURZHAUBAY

Aset Nurzhaubay was accused of participating in DCK groups on social networks, calling for protest actions, writing the phrases "Shal Ket" ("old man, go away") and "Alga DCK" ("Go forward, DCK") at several bus stops. He also placed a poster with these inscriptions on the street. Subsequently, the police seized the poster from him along with paints. Nurzhaubay was also accused of taking possession of the money of his female acquaintance by deception.

He was charged with "providing information services to the DCK criminal group" (Article 266, part 1 of the CC), "participating in the activities of an organisation which has been recognised as extremist" (Article 405, part 2 of the CC) and "fraud" (Article 190, part 1 of the CC).

In April 2018, Nurzhaubay was arrested. According to Nurzhaubay, NCS officers promised to "close the case" if he addressed a "video message to the people" stating that, reportedly, "Mukhtar Ablyazov promised to pay me and deceived me".⁴⁵ In addition, the investigator threatened to imprison his mother, and in protest, Nurzhaubay cut his veins.

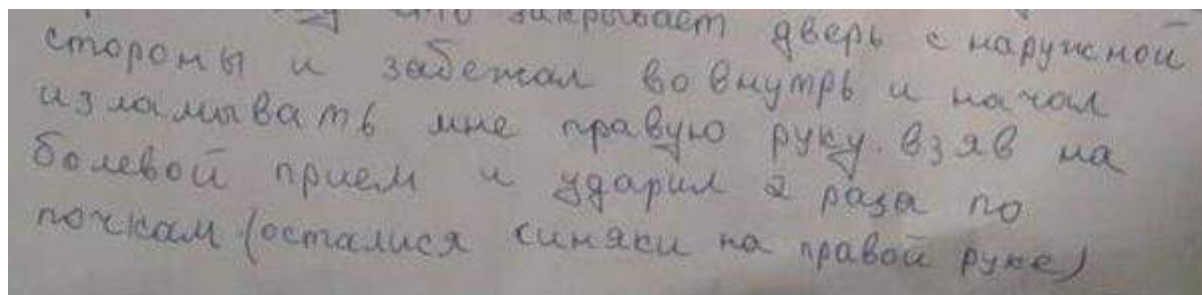
The authorities **denied the request of members of the Mission** of the Italian Federation for Human Rights to visit Nurzhaubay in the pre-trial detention centre. Other members of human rights missions, Swiss parliamentarians Carlo Sommaruga and Claude Begle, as well as Italian Senator Roberto Rampi, received a similar refusal.

⁴⁵ <https://www.facebook.com/lyudmyla.kozlovska/posts/10212417353651357>

On 26 July 2018, the trial in the case of Aset Nurzhaubay was launched in the Medeu District Court of Almaty. The case was led by Judge Ulan Kishibay. FIDU observers Iryna Zemlyana, Oleksandr Ratushnyak, Maksym Sytnikov, Oleksandr Yermochenko and Polina Zabizhko attended the trial.

The chief witness of the prosecution, Bagbergenova, who reported on the participation of Nurzhaubay in the DCK, did not appear in court. Nurzhaubay pointed out the contradictions in the witness' testimony and demanded that she be cross-examined in court, but this was not done. The judge rejected the key motions filed by the defence.

Nurzhaubay pled not guilty and **drew the attention of the court to the fact that he had been subjected to torture**. He reported that in the pre-trial detention centre law enforcement officers beat him in the kidneys area and twisted his arm.



A part of Nurzhaubay's statement describing being beaten by an officer of the detention facility

"...[he] began to break my right arm, applying a jointlock, and then hit my kidneys twice (after this event, bruises remained on my right arm)."

On 18 September 2018, the police detained Nurzhaubay's mother at the moment when she was trying to speak with members of the European Parliament who arrived in Kazakhstan on an official visit.⁴⁶ A few days after that, on 2 October 2018, Nurzhaubay **read out a statement of "repentance"**. He stated that he "understood" that Kazakhstan "has no politically motivated persecution" and that "the promises of Mukhtar Ablyazov are false and idle". "[...] *Pseudo-defenders come to Kazakhstan to show people like me and report to Ablyazov that the work has been done,*" Nurzhaubay read. He also stated that he had no complaints against law enforcement officials.

Nurzhaubay practically literally repeated the theses of Kazakhstan's state propaganda. The prosecutor requested six years in prison for Nurzhaubay, but following his statement of "repentance", the court handed down a three-year suspended sentence with regard to Nurzhaubay.

MURATBEK TUNGISHBAYEV

Muratbek Tungishbayev is an opposition blogger and journalist. He covered the events in Zhanaozen in 2011, after which he was forced to leave Kazakhstan due to pressure from the authorities. The Kazakhstani authorities accused him of "providing information services to the DCK criminal group" (Article 266 of the CC) and "participating in the activities of an organisation which has been recognised as extremist" (Article 405 of the CC). The investigation documents indicated that Tungishbayev "*systematically provoked a discussion on hot and sensitive topics in support of the DCK extremist movement*".

On 16 June 2018, Muratbek Tungishbayev was extradited from Kyrgyzstan to Kazakhstan with gross violations of the law. The Kyrgyz authorities did not wait for the appeal or the procedure considering Tungishbayev's asylum application to be concluded.

⁴⁶ https://twitter.com/AnaMartinsGomes/status/1042032224399511552?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwtterm%5E1042086575985905667&ref_url=https%3A%2F%2Frus.azattyq.org%2Fa%2F29496835.html

Before the arrest, Tungishbayev underwent eye surgery. **In the pre-trial detention centre, Tungishbayev repeatedly reported visual impairment and pain.** Medical doctors stated the need for urgent hospitalisation, but the Kazakhstani authorities ignored this recommendation. Such treatment of an arrested person is a form of cruel and inhuman treatment.

On 30 June 2018, observer Andriy Chernousov met with Muratbek Tungishbayev's wife, Mira Kaliyeva. On 10 August 2018, mission representatives received information that Muratbek Tungishbayev's health had sharply deteriorated. The mission decided to appeal to the management of Pre-Trial Detention Centre No. 18 (LA-155/18) with a request that they meet with the detainee. **Head of the pre-trial detention centre, Ruslan Dzhunusov, denied them permission to meet with the detainee,** stating that *"foreign citizens from obscure missions are not allowed to visit prisoners"*.

On 11 October 2018, Kazakhstani pro-government media distributed a video recording of the speech of Mira Kaliyeva, the wife of Tungishbayev.⁴⁷ Kaliyeva's statements indicate that she most likely agreed to "cooperate with the investigation bodies". Mira Kaliyeva stated that her husband suffered *"because of Ablyazov's ambitions, because of the fact that he wanted to create the image of himself as an opposition politician"*. Kaliyeva also stated that *"there is no help"* from human rights activists and international human rights missions, that they are *"controlled by Ablyazov"* and *"present Tungishbayev as a political prisoner"*.

Following Mira Kaliyeva's public repentance, Muratbek Tungishbayev was released from the pre-trial detention centre. On 26 November 2018, a video recording with the participation of Tungishbayev was distributed in the Kazakhstani pro-government media. In the video material, he stated that he "realised his guilt" and urged people "not to believe what Ablyazov was saying".

Thus, this case has become another example of how, in exchange for release, the authorities of Kazakhstan demand that the accused renounce opposition views and slander human rights defenders.

MUKHTAR DZHAKISHEV

Mukhtar Dzhakishev is the former head of the state-owned company Kazatomprom (1998–2001, 2002–2009).

Dzhakishev was accused of "embezzlement of entrusted property" (Article 176 of the CC), "taking a bribe" (Article 311 of the CC) and "fraud" (Article 177 of the CC). In 2010 and 2012, two lawsuits were held against Dzhakishev. He was sentenced to 14 years in prison.

In December 2015, the UN Human Rights Committee concluded that Dzhakishev had not been guaranteed the right to a fair and public court, the right to defence, the right to contact lawyers and the right to humane treatment. The UN demanded that the verdict be revoked and Dzhakishev be released from prison (Communication No. 2304/2013).⁴⁸ However, for over four years, Kazakhstan has not complied with the decision of the UN Committee. The authorities systematically denied international human rights missions' requests to visit Dzhakishev.

While in detention, Dzhakishev's life-threatening diseases exacerbated. He is at risk of stroke and heart attack. Recent medical examinations revealed impaired brain function. He also has cataracts in both eyes. The authorities of Kazakhstan do not provide Dzhakishev with effective and long-term medical treatment. In June 2018, Dzhakishev was granted disability status. The lawyer reports that in Kazakhstan there are no conditions for the proper treatment of such complex diseases as those suffered by Dzhakishev.

In November 2018 and in July 2019, a Kazakhstani court twice refused to release Dzhakishev on parole. FIDU volunteers observed the court hearings. The formal reason for the refusal was that Dzhakishev had not paid the damages stipulated by the verdict in the amount of more than 260 million dollars.

⁴⁷ https://www.youtube.com/watch?time_continue=1&v=Aq6U_CtsnpU

⁴⁸ https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2f115%2fD%2f2304%2f2013&Lang=en

Only on 3 March 2020, the court granted the request for early release of Mukhtar Dzhakishev. A few days earlier, President Kassym-Zhomart Tokayev, in an interview with a pro-government media, expressed confidence that the decision on the Dzhakishev case "would be fair".⁴⁹ This may indicate that the authorities directly influenced the court decisions in the Dzhakishev case.

On 19 March 2020, Mukhtar Dzhakishev was officially released from prison on parole. During the unserved part of the sentence (3 years and 3 months), probation control will be carried out with regard to Dzhakishev. Until the end of the probationary control, Dzhakishev will not be able to travel to other regions of Kazakhstan without police permission and will not be able to travel outside of Kazakhstan. He must also pay the damages stipulated by the verdict in the amount of more than 260 million dollars.

7. CONCLUSIONS AND RECOMMENDATIONS

In June 2018, the Italian Federation for Human Rights launched a mission to monitor the implementation of Kazakhstan's obligations under international human rights treaties. Unfortunately, the mission was interrupted due to the actions of the authorities of Kazakhstan. In February 2019 FIDU observers Lyudmyla Voloshyna and Valeriy Yavtushenko were unlawfully expelled from the country. The Kazakhstani authorities also did not allow observer Sergiy Antonishen to enter the country. Thus, the further implementation of the observation mission by foreign human rights defenders was, in fact, blocked. The collection of information on human rights violations in Kazakhstan was continued due to the help of volunteers from Kazakhstan.

According to the Agreement on Enhanced Partnership and Cooperation between the EU and Kazakhstan, respect for democratic principles, human rights and the rule of law are the "essential element" of the agreement. Kazakhstan also made a number of commitments in the field of human rights and the rule of law as a member of the OSCE.

In 1998, Kazakhstan ratified the UN Convention against Torture, and in 2006, the International Covenant on Civil and Political Rights. Based on evidence from civil society activists, human rights defenders, victims of politically motivated prosecutions, and their relatives, the following violations of the Covenant have been identified, which are common in Kazakhstan:

- The use of torture or cruel, inhumane or degrading treatment or punishment (Art. 7).
- Arbitrary arrest and detention (Art. 9).
- Violation of the right to humane treatment of persons deprived of their liberty (Article 10).
- Violation of the right to a fair and public hearing by a competent, independent and impartial court (Art. 14).
- Violation of the right to freedom of expression (Art. 19).
- Violation of the right to peaceful assembly (Art. 21).
- In the case of the expulsion of FIDU observers, there was a violation of the right to argue against their expulsion and to review their case by a competent authority (Article 13).

Based on the observations and conclusions made during the mission, the Italian Federation for Human Rights considers it necessary to provide a number of recommendations in order to improve the situation of respect for human rights, democratic standards and the rule of law in Kazakhstan.

⁴⁹ <https://informburo.kz/interview/kasym-zhomart-tokayev-vse-nacionalnosti-prozhivayushchie-v-kazahstane-po-suti-yavlyayutsya-edinoynaciy.html>

Recommendations to the authorities of Kazakhstan:

- Implement the recommendations of the Resolution of the European Parliament of 14 March 2019 on the human rights situation in Kazakhstan.
- Comply with the decisions of the UN Human Rights Committee and the UN Working Group on Arbitrary Detention in cases when these bodies arrive to the conclusion that the right to a fair and public court, the right to defence, the right to contact lawyers and the right to humane treatment have been violated.
- Continue the reform of the justice system in order to fully ensure international standards for an independent and fair investigation and trial.
- Based on international standards, give a clear definition in the legislation of the concepts of “extremism” and “incitement to social discord” in order to avoid the selective application of these norms and the violation of the right to freedom of speech and freedom of association.
- Investigate into allegations of torture in a proper and thorough manner, including bringing more cases to trial.
- Review criminal cases, within the framework of which it was recorded that evidence and statements on them were obtained under torture.
- Release from places of detention persons with regard to whom human rights organisations have provided evidence of their politically motivated conviction.
- Provide conditions for the unobstructed and safe work of members of international human rights missions.
- Cancel the decisions regarding FIDU observers on their expulsion from Kazakhstan and their ban on entry into Kazakhstan. Refrain from subjecting members of international observation missions and volunteers to detentions and criminal prosecutions for their human rights activities.
- Ensure access to prisoners for human rights monitoring missions.
- Cease the practice of arbitrary detention of participants in peaceful protests;
- Cease the practice of exerting pressure on relatives of political prisoners and civic activists.

Recommendations to the international community:

- Within the framework of the dialogue with the Kazakhstani authorities, it is important to systematically emphasise the need for Kazakhstan to comply with its international obligations to protect human rights and the rule of law, in particular, ensure the right to freedom of assembly, freedom of association and freedom of speech.
- Investments in the economy of Kazakhstan should be made only if Kazakhstan fulfils its human rights obligations and ensures the rule of law in the country.
- Send representatives to Kazakhstan in order to participate in human rights monitoring missions. In particular, to monitor the conditions of prisoners and carefully observe trials with regard to which human rights organisations suspect a certain political motivation. We also emphasise the importance of meetings between EU representatives and victims of political persecution in order to obtain more objective information about the situation in Kazakhstan.
- Conduct an audit of the effectiveness of the use of funds allocated to Kazakhstan for the implementation of reforms, in particular, justice reform.

- In communication with the authorities of Kazakhstan, emphasise the need to comply with the requirements of the Resolution of the European Parliament on the situation of human rights in Kazakhstan dated 14 March 2019, which requires the cessation of politically motivated prosecution and persecution of the opposition, the release of political prisoners, and the reform of oppressive criminal law.

ATTACHMENT: KAZAKHSTANI POLITICAL PRISONERS

Those held in detention on charges of supporting the opposition movement DCK:



Aset Abishev



Almat Zhumagulov



Kenzhebek Abishev

Those held in detention for their civil society activities:



Yerzhan Yelshibayev



Sanat Bukenov



Aron Atabek



Max Bokayev

Those held in detention for posting comments in social media:



Zhambyl Kobeyzinov



Ruslan Ginatullin



Igor Chuprina



Igor Sychev

Xinjiang refugees:



Kaster Musahanuly



Murager Alimuly